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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 120118051-1693-01]

RIN 0648-BB64

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species;
High Seas Transshipment Prohibitions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS is considering promulgating regulations under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to prohibit the transshipment of highly migratory species (HMS) on the high seas to or from certain types of U.S. vessels that operate in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). These regulations would implement certain decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) in order to meet the obligations of the United States under the Convention. NMFS issues this advance notice of proposed rulemaking to solicit information and comments about HMS transshipment activities by U.S. vessels, and the potential effects of a prohibition on high seas transshipments in the Convention Area.

DATES: Comments must be submitted in writing by [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments on this advance notice of proposed rulemaking (ANPR), identified by NOAA-NMFS-2012-0001, may be sent to either of the following addresses:

- Electronic submission: Submit all electronic public comments via the Federal e-Rulemaking portal <http://www.regulations.gov>; or
- Mail: Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

Instructions: Comments must be submitted to one of the two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are part of the public record and generally will be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808-944-2273.

SUPPLEMENTARY INFORMATION:

Electronic Access

This advance notice of proposed rulemaking is also accessible at <http://www.gpoaccess.gov/fr>.

Background on the Convention and the WCPFC

The Convention Area comprises the majority of the western and central Pacific Ocean. A map showing the boundaries of the Convention Area can be found on the WCPFC Web site at: <http://www.wcpfc.int/doc/convention-area-map>. The Convention focuses on the conservation and management of HMS and the management of fisheries for HMS.

As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC. The WCPFC Implementation Act (16 U.S.C. 6901 et seq.) authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The authority to promulgate regulations has been delegated to NMFS.

WCPFC Decision Regarding the Prohibition of Transshipments on the High Seas in the Convention Area

At its Sixth Regular Annual Session, in December 2009, the WCPFC adopted Conservation and Management Measure (CMM) 2009-06, “Conservation and Management Measure on the Regulation of Transshipment.” The CMM, available with other decisions of the WCPFC at <http://www.wcpfc.int/conservation-and-management-measures>, furthers the objectives of Article 29 of the Convention and includes specific obligations for WCPFC Members, Participating Territories, and Cooperating Non-Members (collectively, CCMs) to

regulate transshipment activities in the Convention Area and transshipments elsewhere of HMS caught in the Convention Area. NMFS is implementing the majority of the provisions of CMM 2009-06 in a separate rulemaking proceeding (see NOAA-NMFS-2011-0281 at www.regulations.gov).

Under the Convention, CCMs are obligated with limited exceptions to prohibit transshipments at sea involving purse seine vessels in the Convention Area. NMFS has implemented this prohibition (see 50 CFR 300.216(b)). CMM 2009-06 contains a provision obligating CCMs to prohibit their vessels (other than purse seine vessels) from transshipping HMS on the high seas in the Convention Area, subject to certain considerations. The prohibition does not apply to vessels for which the flag CCM has determined that it is impracticable for them to operate without being able to transship on the high seas, and has advised the WCPFC of such. Paragraph 37 of CMM 2009-06 sets forth interim guidelines for CCMs to use in making such determinations. CMM 2009-06 calls for the WCPFC to consider adopting definitive guidelines in 2012.

Under the interim guidelines, vessels are to be excepted from the prohibition on transshipment on the high seas when the flag CCM determines that: (1) the prohibition of transshipment on the high seas would cause a significant economic hardship, which would be assessed in terms of the cost that would be incurred to transship or land fish at feasible and allowable locations other than on the high seas, as compared to total operating costs, net revenues, or some other meaningful measure of costs and/or revenues; and (2) the vessel would have to make significant and substantial changes to its historical mode of operation as a result of the prohibition of transshipment on the high seas.

Pursuant to a number of fisheries regulations, NMFS collects data from vessel owners and operators on some transshipment activities. However, the data do not cover all transshipment

activities that could be subject to this regulation; they do not identify the locations of transshipments (e.g., with respect to in-port versus at-sea, on the high seas versus in waters under national jurisdiction, and inside versus outside the Convention Area), and the types of data collected differ among the fishing fleets. Accordingly, the available data may not provide complete information on historical transshipment activities by U.S. vessels on the high seas in the Convention Area.

Based on the best available data, NMFS is aware that from 1993-2009 an average of 12 transshipments per year were conducted by the U.S. longline fleets operating in the area of application of the Convention, excluding transshipments involving the receipt of only shark fins from foreign-flagged vessels – an activity that was curtailed after the passage of the Shark Finning Prohibition Act in 2000. It is likely that most of these transshipments took place at sea, but it is unknown how many of these transshipments took place on the high seas. It also appears that these transshipments involved vessels in the Hawaii-based longline fleet and the American Samoa-based longline fleet.

NMFS data indicate that U.S. albacore troll vessels operating in the Convention Area conduct at-sea transshipments. For example, from 1990-2004 an average of 49 transshipments per year were conducted by U.S. albacore troll vessels in the area of application of the Convention. It is likely that all of these transshipments took place on the high seas. The available data indicate that no U.S. albacore troll vessel has transshipped at sea in the Convention Area since 2004.

NMFS has no information on high seas transshipments in the Convention Area for vessels in the pole-and-line, handline, tropical troll, or any other HMS fleets.

NMFS is issuing this advance notice of proposed rulemaking to seek public comment on transshipment activities by U.S. HMS fishing fleets in the Convention Area and the impacts that a prohibition on high seas transshipment would have on fishing operations. NMFS would like information that would help it apply the interim guidelines of CMM 2009-06 to determine whether it would be impracticable for certain fishing vessels to operate without being able to transship on the high seas in the Convention Area. In particular, NMFS would like to receive information and comments from potentially affected entities and others on the following: (1) transshipment activity that has occurred on the high seas in the Convention Area in the past; (2) transshipment activity that presently takes place on the high seas in the Convention Area; (3) transshipment activity that is likely to take place or is anticipated to take place on the high seas in the Convention Area in the future; (4) changes to fishing patterns and practices that could be caused by a prohibition on high seas transshipment in the Convention Area; and (5) the effects (economic or otherwise) that could be caused by a prohibition on high seas transshipment in the Convention Area.

NMFS will consider the information and comments received in order to determine how best to implement the high seas prohibition provision of CMM 2009-06 and any applicable exceptions.

Classification

This advance notice of proposed rulemaking has been determined to be not significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 6901 et seq.

Dated: February 9, 2012

Alan D. Risenhoover,

Acting Deputy Assistant Administrator

For Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2012-3545 Filed 02/14/2012 at 8:45 am; Publication Date: 02/15/2012]